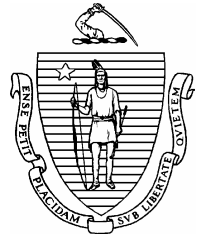


# Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

COMMISSION ADJUDICATORY  
DOCKET NO. 721

IN THE MATTER  
OF  
JACOB KULIAN

## DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Jacob Kulian pursuant to Section 5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On August 3, 2004, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Kulian. The Commission has concluded its inquiry and, on February 3, 2005, found reasonable cause to believe that Kulian violated G.L. c. 268A, §§ 19 and 23(b)(2).

The Commission and Kulian now agree to the following findings of fact and conclusions of law:

### **-Findings of Fact-**

1. From 1995 through April 3, 2004, Kulian was an elected member of the Middleborough Board of Assessors ("the Board").

2. During all times relevant, Kulian and his wife owned and lived in a single-family home in Middleborough.

3. In 1995, shortly after Kulian's election to the Board, the Board appointed an Assessor-Appraiser. The Assessor-Appraiser runs the day-to-day operations of the Assessors' Office and is an employee of the Board. The Assessor-Appraiser's duties include maintenance and processing of the Board's computer assessment information.

4. Sometime in summer 1997, Kulian instructed the Assessor-Appraiser to lower Kulian's home's assessed value to a certain figure. There was no legitimate basis for the reduction. In order to meet Kulian's stated figure, the Assessor-Appraiser went into the computer and reduced Kulian's property's assessed value by 8%. The 8% reduction to the assessment of Kulian's property continued through FY99. The total net benefit from Kulian's 1997 conduct reducing his property's assessment (affecting tax years 1997, 1998 and 1999) was \$447.

5. In 2000, all Middleborough home assessed values rose as a result of a revaluation. In summer 2000, Kulian again instructed the Assessor-Appraiser to lower his home's assessed value to a certain amount. Again, there was no legitimate basis for the reduction. In order to meet Kulian's stated figure, the Assessor-Appraiser went into the computer and further reduced Kulian's assessed property value from 8% to 13%. The 13% reduction to the assessment of Kulian's property continued through FY03. The

total net benefit from Kulian's 2000 conduct in reducing his property assessment (affecting tax years 2000, 2001 and 2002) was \$954.

6. In spring 2003, the 13% reduction made to the assessed value of Kulian's property was discovered and reversed.

7. On December 22, 2003, the Kulians applied to the Board for an abatement indicating that their property was assessed too high. On January 8, 2004, the Board, including Kulian, approved Kulian's abatement application. The benefit from Kulian's 2004 abatement was \$814.

8. On December 31, 2003, the Kulians applied to the Board for a FY04 \$500 Statutory Exemption based on age and income eligibility.<sup>1</sup> The Board, including Kulian, voted on January 5, 2004 to approve the Kulians' statutory exemption application. Kulian knew when he voted that he was not eligible for the exemption as his income exceeded the eligibility requirements. The result of the vote was a reduction in the Kulians' FY04 tax bill of \$500. The reduction was removed, however, in spring 2004 before the Kulians paid their property tax bill.

#### **-Conclusions of Law-**

9. As a Board member, Kulian was a municipal employee pursuant to G.L. c. 268A, § 1.

#### *Kulian Directs Assessor-Appraiser to Reduce his Property Assessment in 1997 and 2000*

10. Section 23(b)(2) prohibits public employees from, knowingly or with reason to know, using or attempting to use their official position to secure for themselves or others unwarranted privileges or exemptions of substantial value not properly available to similarly situated individuals.

11. The unjustified reductions in Kulian's property value assessments were each unwarranted privileges which were not properly available to Kulian or other similarly-situated property owners.

12. Where the reductions in property value assessments resulted in a decrease in Kulian's annual property tax liability of \$50 or more, each was of substantial value.<sup>2</sup>

13. Kulian knowingly used his assessor position when he directed his subordinate, the Assessor-Appraiser, to make the reductions to his property value assessment.

14. Thus, by directing the Assessor-Appraiser to reduce his property value assessments in 1997 and 2000 (totaling \$1,401 in tax savings), Kulian repeatedly and knowingly used his assessor position to obtain unwarranted privileges of substantial value not properly available to other similarly situated individuals in violation of § 23(b)(2).

#### *Kulian Participates in 2004 Tax Abatement*

15. Section 19 of G.L. c. 268A prohibits a municipal employee from participating<sup>3</sup> as such an employee in a particular matter<sup>4</sup> in which, to his knowledge, he has a financial interest.<sup>5</sup>

16. The Board's decision to approve Kulian's 2004 tax abatement application was a particular matter.

17. Kulian participated in that particular matter by voting as a Board member in favor of his own application.

18. Where, as the property owner, Kulian would receive an annual tax break of \$814 if the abatement were approved, Kulian had a financial interest in that particular matter. Kulian knew of his financial interest in the particular matter when he voted to approve his own abatement.

19. Accordingly, by so participating in the particular matter of his own property tax abatement, Kulian violated § 19.

*Kulian Participates in 2004 Statutory Exemption*

20. The Board's decision to approve Kulian's 2004 Statutory Exemption based on age and income eligibility was a particular matter.

21. Kulian participated in that particular matter by voting as a Board member in favor of his own Statutory Exemption application.

22. Where, as the property owner, Kulian would receive an annual tax break of \$500 if the Statutory Exemption application was approved, Kulian had a financial interest in that particular matter. Kulian knew of his financial interest in the particular matter when he voted to approve his own Statutory Exemption.

23. Accordingly, by so participating in the particular matter of his own Statutory Exemption application, Kulian violated § 19.

**-Resolution-**

In view of the foregoing violation of G.L. c. 268A by Kulian, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Kulian:

- (1) that Kulian pay to the Commission the sum of \$8,000 as a civil penalty for repeatedly violating G.L. c. 268A, §§ 19 and 23(b)(2);
- (2) that Kulian reimburse the Town of Middleborough the sum of \$2,215 (\$447 from the 1997 reduction, \$954 from the 2000 reduction and \$814 from the 2004 abatement) for property tax reductions to which he was not entitled; and
- (3) that Kulian waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: April 21, 2005

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<sup>1</sup> General laws, ch. 59, § 5 provides exemptions from having to pay property tax to certain organizations and individuals that meet certain criteria. Paragraph 41(c) provides, in part, “Real property, to the amount of four thousand dollars of taxable valuation or the sum of five hundred dollars, whichever would amount in an exemption of the greater amount of taxes due, of a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by said person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday prior to the fiscal year for which an exemption is sought and occupied by them as their domicile, or for a person who has reached his seventieth birthday prior to the fiscal year for which an exemption is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile.”

<sup>2</sup> Anything worth \$50 or more is of substantial value. *In re LIAM*, 2003 SEC 1114.

<sup>3</sup> “Participate” means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

<sup>4</sup> “Particular matter” means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

<sup>5</sup> “Financial interest” means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.